

REMARKS

Applicants would like to thank Examiner Yager for the courtesies extended during the in-person interview with Applicants' representative, James Burke, on April 21, 2011. Features related to the structural arrangement of the insert of the present invention discussed at this interview have been incorporated herewith. Applicants and the undersigned are appreciative of the Examiner's continued time and guidance.

Claims 1, 2, 5, 7-17 and 19-25 have been rejected. Independent Claim 1 and Claims 5, 7-17 and 19-25 have been amended herewith. Claim 2 has been cancelled, without intending to dedicate or abandon any patentable subject matter. Accordingly, Claims 1, 5, 7-17 and 19-25 are now pending. Applicants respectfully request reconsideration of this application as amended.

Claim Rejections – 35 USC § 112

The Office Action has rejected Claims 1, 2, 5, 7-17 and 19-25 under 35 USC 112, second paragraph. Claim 1 has been amended to recite a "first cavity" rather than "cavity." Applicants respectfully submit that the rejection under section 112 therefore be withdrawn.

Claim Rejections – 35 USC § 102

The Office Action has rejected Claims 1, 2, 5, 12-14, 16 and 19-21 as being anticipated by Nash et al. (US 5714186) and further being anticipated by Houzego et al. (WO 95/04688). Sole independent Claim 1 has been amended herewith to recite features not disclosed by Nash or Houzego including, for example, the body having a perimeter, the positioning device positioned outside the perimeter, and a lower portion of the positioning device being coplanar with a lower portion of the body. Support for the currently presented amendments can be found in the originally filed specification, including the drawings. Thus, no new matter is believed to be added. Applicants respectfully request that the rejection under 35 USC 102 in view of Nash be withdrawn.

Claim Rejections – 35 USC § 103

The Office Action has rejected Claims 10 and 11 under 35 USC 103 as being unpatentable over Nash. In light of the foregoing, Applicants submit that Claims 10 and 11 are now patentable based at least upon their dependency from allowable base claim 1.

The Office Action has further rejected Claims 10 and 11 under 35 USC 103 as being unpatentable over Nash in further view of Grieshaber et al. (US 1567050). Applicants respectfully submit that the previously discussed amendments recite features not found in Nash or Grieshaber, either alone or in combination. For example, neither Nash nor Grieshaber disclose a lower surface of a positioning device being coplanar with a lower surface of the body, in combination with various additional features of Claim 1 as currently presented. Grieshaber discloses a generally spherical submersible ballast tank. Accordingly, Applicants respectfully request withdrawal of this rejection.

The Office Action has rejected Claims 7-9 and 22-25 under 35 U.S.C. 103 as being unpatentable over Nash in view of Reichinger (WO 99/54229). Applicants respectfully submit that the previously discussed amendments recite features not found in Nash or Reichinger, either alone or in combination. For example, neither Nash nor Reichinger disclose a lower surface of a positioning device being coplanar with a lower surface of the body, nor a device wherein the at least one first cavity is maintained in an upright position for communicating with a headspace in an un-submerged state and for releasing contents when said insert is submerged in the gas-pressurized liquid. Reichinger discloses a two-compartment container for securing to a bottom of a pressurized container and releasing “flavor” upon opening. Accordingly, Applicants respectfully request withdrawal of this rejection.

The Office Action has rejected Claims 15 and 17 under 35 U.S.C. 103 as being unpatentable over Nash in view of Wright et al. (US 5,714,186). Applicants respectfully submit that the previously discussed amendments recite features not found in Nash or Wright, either alone or in combination. For example, neither Nash nor Wright discloses a lower surface of a positioning device being coplanar with a lower surface of the body, in combination with various additional features of Claim 1 as currently presented. Accordingly, Applicants respectfully request withdrawal of this rejection.

The Office Action has rejected Claims 10 and 11 under 35 USC 103 as being unpatentable over Houzego and Houzego in view of Grieshaber. Applicants respectfully submit that Claims 10 and 11 are allowable based at least upon their dependence from an allowable base claim as set forth above. Additionally, features have been included within independent Claim 1 which are not found, taught, or rendered obvious by the Houzego or Grieshaber, either alone or in combination.

The Office Action has rejected Claims 7-9 and 22-25 under 35 USC 103 as being unpatentable over Houzego in view of Reichinger. Applicants respectfully submit that the previously discussed amendments recite features not found in Houzego or Reichinger, either alone or in combination. For example, neither Houzego nor Reichinger disclose a lower surface of a positioning device being coplanar with a lower surface of the body, in combination with various additional features of Claim 1 as currently presented. Accordingly, Applicants respectfully request withdrawal of this rejection.

The Office Action has rejected Claims 15 and 17 under 35 USC 103 as being unpatentable over Houzego in view of Wright. Applicants respectfully submit that the previously discussed amendments recite features not found in Houzego or Wright, either alone or in combination. For example, neither Houzego nor Wright discloses a lower surface of a positioning device being coplanar with a lower surface of the body, in combination with various additional features of Claim 1 as currently presented. Accordingly, Applicants respectfully request withdrawal of this rejection.

With all objections and rejections having been overcome, Applicants respectfully submit the application is in condition for allowance. A prompt notice of allowance is respectfully solicited.

Conclusion

Should the Examiner believe anything further is desirable in order to place the application in even better condition for allowance, the Examiner is encouraged to contact Applicants undersigned representative at the telephone number listed below.

The Commissioner is hereby authorized to charge to deposit account number 19-1970 any fees under 37 CFR § 1.16 and 1.17 that may be required by this paper and to credit any overpayment to that Account. If any extension of time is required in connection with the filing of this paper and has not been separately requested, such extension is hereby petitioned.

Respectfully submitted,

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Date: April 22, 2011